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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36447-2023
Date of decision: 08.12.2023

DEEP SINGH ALIAS BABBY

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Puran Singh Hundal, Senior Advocate with
Mr. Gursahib Singh Hundal, Advocate and
Mr. Vikramjeet Singh, Advocate for the petitioner.

Mr. Vijesh Sharma, Addl. A.G., Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.152 dated 21.04.2020, under Section 15 of the NDPS Act, registered at Police Station City, Mandi Dabwali, Sirsa, District Sirsa, Haryana.

2. Learned Senior Advocate appearing on behalf of the petitioner submitted that the petitioner is in custody from 27.03.2021, which is more than 2 years and 8 months. He further submitted that earlier charges in the present case were framed on 08.10.2021 but thereafter, prosecution witnesses were not examined and thereafter, again fresh charges were framed on 12.07.2023. He also submitted that till date only 4 prosecution witnesses have been examined and these prosecution witnesses are merely formal witnesses. He referred to the names of the aforesaid formal witnesses by stating that first was ASI Ram

Niwas, who was only the scribe of the FIR; second was Constable Rahul Kumar, who was to prove the report under Section 42 of the NDPS Act; third was DSP Kuldeep Singh, who was only a witness to the inventory under Section 52-A of the NDPS Act and fourth was one Ashok Kumar, Ahlmad, who was a sample carrier. He further submitted that all the aforesaid four witnesses are only formal witnesses and none of the material witnesses have been examined and no person who was the part of the police party or recovery witness has been examined in the present case and the petitioner had to face incarceration for more than 2 years and 8 months. He further submitted that the allegations against the petitioner are that when the police received secret information, then the police recovered two cars, out of which one car was Scorpio and another was Bolero and the car as so associated by the police with the petitioner was the Scorpio bearing registration No.HR-24W-1171 from where there was alleged recovery of 140 kgs. of *poppy husk*. He further submitted that in fact the aforesaid Scorpio car had already been sold by the petitioner through an affidavit much prior to the lodging of the FIR and has referred to Annexure P-2 in this regard. He further submitted that although the vehicle cannot be sold by way of an affidavit because it has to be done through the registering authority by following a proper procedure but for the purpose of considering the facts and circumstances of the present case, the possession of the car etc. has to be seen. To substantiate his arguments, he referred to an order passed by the learned trial Court dated 10.05.2023, wherein earlier one application was filed by one Avtar Singh for release of the RC and the aforesaid Avtar Singh is the person to whom the petitioner had sold the aforesaid Scorpio car about 2 months prior to lodging of the present FIR. In the aforesaid order, it

has been so depicted that rather the petitioner had suffered a statement that he had sold his Scorpio car to Avtar Singh and he has no objection in giving RC to him and in this way, RC was released to the aforesaid Avtar Singh. He further submitted that although it has come in the order of the learned trial Court that the aforesaid registration number HR-24W-1171 is of a motorcycle but it appears to be some typographical mistake as the registration number was that of a car. He further submitted that in this way, it is clear that the petitioner was not even having the possession of the said Scorpio car at the time of registration of the FIR.

3. Learned Senior Advocate appearing on behalf of the petitioner while further substantiating his arguments submitted that even after the framing of the charges, no material witness has been examined and a perusal of the orders passed by the learned trial Court after 12.07.2023 would show that repeatedlyailable and non-bailable warrants were issued against the remaining prosecution witnesses and even on one date, the concerned Drawing and Disbursing Officer was also directed not to release the salary of one of the prosecution witnesses till further orders and in this way, the witnesses who were the material witnesses are deliberately not deposing before the Court because the petitioner has been falsely implicated in the present case. He further submitted that the bar contained under Section 37 of the NDPS Act will not apply to the petitioner especially in view of the fact that there had been no recovery of any contraband from the petitioner but was allegedly made from aforesaid Scorpio car, which according to the police was owned by the petitioner, whereas it was in fact sold to aforesaid Avtar Singh, which is so reflected in the order dated 10.05.2023 passed by the learned trial Court. He has

referred to a judgment of the Hon'ble Supreme Court in *Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]* and contended that when there is a long custody, which is not attributable to the accused and the delay has been caused by the prosecution, then Rights under Article 21 of the Constitution of India are effected. He also referred to another judgment of Hon'ble Supreme Court in *"Mohd. Muslim @ Hussain versus State (NCT of Delhi)", 2023 AIR (SC) 1648*, wherein the scope of Section 37 of the NDPS Act vis-a-vis Article 21 of the Constitution of India has been discussed by taking a serious view with regard to long trial. He further referred to a judgment of Hon'ble Supreme Court in *"Dheeraj Kumar Shukla versus The State of Uttar Pradesh", 2023 SCC Online SC 918* and also a judgment of Hon'ble Supreme Court in *"Rabi Prakash versus The State of Odisha", Special Leave to Appeal (Criminal) No.4169 of 2023* to contend that long custody itself is a ground for grant of bail notwithstanding the bar contained under Section 37 of the NDPS Act.

4. On the other hand, Mr. Vijesh Sharma, Addl. A.G., Haryana has opposed the grant of regular bail to the petitioner on the ground that the petitioner is involved in as many as 6 more cases, out of which 5 cases pertain to the NDPS Act. He submitted that it is correct that the petitioner is in custody from 27.03.2021, which is more than 2 years and 8 months and it is also correct that now only 4 prosecution witnesses have been examined and none of the witnesses, who were the part of the police party have been examined till date. He further submitted that since the quantity recovered from the car of the petitioner was 140 kgs. of *poppy husk*, the prayer of the petitioner for grant of regular bail is hit by the bar contained under Section 37 of the NDPS Act. He

also submitted that from another car, which was standing nearby, there was a recovery of 378 kgs. of *poppy husk* but as per the police, the aforesaid car did not belong to the present petitioner but it was only the Scorpio car that belongs to the petitioner from where 140 kgs. of *poppy husk* was recovered.

5. I have heard the learned counsel for the parties.

6. The petitioner is in custody from 27.03.2021, which is more than 2 years and 8 months. Earlier charges were framed on 08.10.2021 and thereafter, fresh charges were framed on 12.07.2023. After the aforesaid date, repeatedly bailable and non-bailable warrants were issued by the learned trial Court for the purpose of deposition but as per the learned counsel for the parties, only 4 prosecution witnesses have been examined, who are stated to be not material witnesses as has been described by the learned Senior Advocate for the petitioner as aforesaid. Even at one stage, the learned trial Court directed the concerned Drawing and Disbursing Officer not to release the salary of one of the witnesses till further orders. On a query being raised to the learned State counsel as to what was the justification as to why the learned trial Court was constrained to issue bailable and non-bailable warrants against the prosecution witnesses for deposition, to which he could not offer any explanation. The argument which has been raised by the learned State counsel that the petitioner is involved in 6 more cases, out of which 5 cases pertain to NDPS Act and therefore, he is not entitled for the grant of regular bail is not sustainable in view of the facts and circumstances of the present case and the custody of the petitioner.

7. Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* has discussed this serious issue with regard to delay in trial and its effect on the

Right to Life of an individual under Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced as under:-

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm.

We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”.

8. Hon'ble Supreme Court in **Mohd. Muslim @ Hussain's case** (**supra**) has dealt with this issue with regard to delay in trial and long custody of the accused person *vis-a-vis* the bar contained under Section 37 of the NDPS

Act. The relevant portion of the aforesaid judgment contained in para Nos.19 and 20 are reproduced as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

9. The Hon'ble Supreme Court in **Dheeraj Kumar Shukla's case** (**supra**) has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

10. Recently, the Hon'ble Supreme Court in **Rabi Prakash's case** (**supra**) has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

11. After hearing learned counsel for the parties, this Court is of the view that the petitioner is entitled for the grant of regular bail on the ground of long custody of more than 2 years and 8 months considering the aforesaid peculiar facts and circumstances of the present case where the material prosecution witnesses are not coming forward for deposition despite repeated bailable and non-bailable warrants being issued against them by the learned trial Court.

12. Therefore, without commenting anything on the merits of the case, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India and also in the light of the aforesaid judgments of the Hon'ble Supreme Court.

13. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

14. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

08.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No